

Attorney Docket No. 2003B061/2

REMARKS/ARGUMENTSRECEIVED  
CENTRAL FAX CENTER  
JUL 27 2006**AMENDMENTS TO THE CLAIMS**

Applicants have withdrawn claims 16-93 for the reasons stated below related to the Examiner's restriction requirement.

Applicants have amended independent claim 1 to include a limitation of the monomers comprising at least 85 wt% propylene monomers. Support for this amendment may be found, *inter alia*, in paragraph [00103] of the application as originally filed. Further, claim 1 has been amended to restrict the antistatic agent to be present in an amount of from 0.3 to 1.5 ppm by weight of monomers introduced into the reactor. Support for the amendment may be found, *inter alia*, in paragraphs [0022] and [0043] and Table 1.

**RESTRICTION REQUIREMENT**

The Office Action restricts the claims of the pending Application to the following groups:

- I. Claims 1-15, 32-45, 47-60 and 62-93 drawn to a polymerization process; and
- II. Claims 16-31, 46 and 61, drawn to a polymer product.

Applicants' confirm their provisional election of Group I made during the telephone conference of April 19, 2006. Applicants' election is respectfully made with traverse. Applicants' also confirm their election of the following species of Claim 1: the catalyst system component (a) is a metallocene complex supported on fluoridized silica, the monomer component (b) is propylene and ethylene, and the antistatic agent component (c) is Stadis®425. The claims covered by this species are Claims 1-15.

As indicated by the Examiner, Applicants reserve the right to rejoin claims 32-45, 47-60 and 62-93 for consideration if generic claim 1 is found to be allowable.

The restriction of Group I from Group II is submitted to be improper because restriction will only necessarily result in duplicative searching and prosecution. Withdrawal of the restriction of Groups I, II and III is respectfully requested.

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As provided in MPEP §821.04, Applicants respectfully reserve the right to rejoin non-elected claims in Group II (claims 16-31, 46 and 61).

### 35 U.S.C. § 102(e)

Claims 1-8 and 10-15 were rejected 35 U.S.C. § 102(e) as being anticipated, independently, by Jensen, et al. U.S. Patent Publication No. US 2005/0159300 ("Jensen") and McDaniel, et al. U.S. Patent No. 6,833,338 ("McDaniel") for the reasons stated on pages 4-6 of the Action. Applicants respectfully disagree.

Applicants submit that Jensen is not properly prior art under 35 U.S.C. §102(e) to Applicants' application. Jensen was filed on January 21, 2004 and published on July 21, 2005, and contains no priority claim. Therefore, Jensen's priority date under Section 102(e) is January 21, 2004. 35 U.S.C. §102(e)(1). Applicants' application was filed on April 20, 2004, but, on its face, properly claims priority to United States Provisional Patent Application No. 60/477,565, filed June 11, 2003. *See* Application, ¶ [0001]. Therefore, Applicants' priority date is June 11, 2003, which antedates Jensen's priority date of January 21, 2004, which removes Jensen as 35 U.S.C. §102(e) prior art with respect to Applicants' application.

Applicants have amended independent Claim 1 (and Claims 2-15 by dependency) to require that the monomer component be composed of at least 85 wt% propylene and that the antistatic component be present in the amount of from 0.3 to 1.5 ppm based on the weight of monomer ("ppmw") introduced into the reactor. McDaniel does not disclose the use of propylene monomers and an antistatic agent. The Examiner admits that McDaniel does not disclose the use of an antistatic agent in the amount of from 0.3 to 0.8 ppmw. *See* Office Action, ¶ 12. Likewise, McDaniel does not disclose the use of an antistatic agent in the amount of 0.3 to 1.5 ppmw. Rather, McDaniel solely discloses the use of ethylene and 1-hexene with an antistatic agent. McDaniel provides no disclosure of the combination of propylene monomers and an antistatic agent. Applicants respectfully submit that McDaniel, therefore, does not anticipate Applicants' claims.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." MPEP §2131, *citing Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). Applicants' invention recites a process comprising contacting a catalyst system, monomers comprising at least 85 wt% propylene and an antistatic agent present in the amount of from

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0.3 to 1.5 ppmw. *See* Claim 1. McDaniel does not disclose the use of propylene monomers in combination with an antistatic agent, nor the presence of the antistatic agent in the amount of from 0.3 to 1.5 ppmw.

In the absence of any disclosure in McDaniel of Applicants' claimed limitations, Applicants respectfully submit that the claimed invention is not anticipated and request that the rejection be withdrawn.

#### CLAIM REJECTIONS – 35 U.S.C § 103

Claim 9 has been rejected under 35 U.S.C § 103(a) as obvious over Jensen and McDaniel, independently. This rejection is traversed and reconsideration requested.

As indicated above, Jensen is not properly prior art with respect to Applicants' application. As Applicants' priority date antedates Jensen, Jensen may not be used as prior art under 35 U.S.C. §103 any more than it can under §102(e).

As discussed above, McDaniel does not disclose or suggest all of Applicants' claimed limitations in independent Claim 1. Therefore, claim 1 cannot be considered obvious. MPEP §2143.03 ("To establish a *prima facie* case of obviousness of a claims invention, all the claim limitations must be taught or suggested by the prior art.") Further, Applicants submit that the propylene monomer and antistatic agent content limitations are not capable of instant and unquestionable demonstration as being well known, and as Claim 9 depends from independent Claim 1, a *prima facie* case of obviousness has not been established for Claim 9. MPEP §2143.03 citing *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988) ("If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious.").

Additionally, the Examiner states that a skilled artisan would be motivated to modify McDaniel's disclosure to minimize the amount of antistatic agent. However, McDaniel does not teach the use of antistatic agents with propylene polymers as claimed by Applicants. McDaniel conducted 31 different examples, none of which described the use of propylene polymers. Similarly, McDaniel only discloses the use of an antistatic agent with an ethylene 1-hexene copolymer. There is no suggestion or motivation in McDaniel, nor has the Examiner provided one, that would motivate one of skill in the art to apply antistatic agents in the amounts claimed to propylene polymers as claimed by Applicants.

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A mere recitation that modification of a prior art reference would be "well within the ordinary skill of the art at the time the claimed invention was made" because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish a *prima facie* case of obviousness without some objective reason to combine the teachings of the references.

MPEP §2143.01(IV) citing *Ex Parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993); see also *In re Kotzab*, 217 F.3d 1365, 1371 (Fed. Cir. 2000).

Applicants' invention partially lays in the discovery that antistatic agents, such as Stadis®425 and the like, which are olefin polymerization catalyst poisons may be beneficially used in very small quantities to prevent fouling of a olefin polymerization process without significantly impacting catalyst activity. As is shown in Table 1 of the Application, Applicants discovered that in amounts less than 1.5 ppm by weight of monomers, antistatic agents may be added to the polymerization system with a loss of catalyst activity of 10% or less. In contrast, when used in the amounts suggested by McDaniel ("less than 5 ppm by weight of dilutant"), the catalyst activity may decrease by 25% or more. McDaniel's failure to recognize the problem associated with use of antistatic agents with olefin polymerization catalysts is further evidence of the non-obviousness of Applicants' invention. *In re Peehs*, 612 F.2d 1287, 1290 (C.C.P.A. 1980) (holding that where there is no evidence of recognition of a problem, it is not proper to say that a solution to the problem would have been obvious) citing *In re Nomiya*, 509 F.2d 566, 572 (C.C.P.A. 1975).

Therefore, in the absence of a reference or concrete evidence explicitly supporting such assertions predicated upon sound technical and scientific reasoning, Applicants respectfully submit that the claimed invention is not obvious and request that the rejection be withdrawn.

### CONCLUSION

Having demonstrated that the cited reference fails to disclose the invention as claimed, all remaining objections and rejections having been overcome, this application is in condition for allowance. Accordingly, Applicants request early and favorable reconsideration in the form of a Notice of Allowance.

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If necessary to affect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to affect a timely response. Please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1712 (Docket #: 2004B061/2).

Respectfully submitted,

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July 26, 2006

Date



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